IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

CRP.No. 2807 of 2002(H)

AGAINST THE ORDER DATED 04/12/2002 IN IA 5608/2002 IN OS.407/1969 OF II ADDL.MUNSIFF COURT, NEYYATTINKARA.

REVISION PETITIONERS/ COUNTER PETITIONERS/PLAINTIFFS:

1. **KARTHYAYANI SARASAMMA, PARAYIRUNNATHATTU PUTHEN VEEDU, MULLOOR P.O., THIRUVANANTHAPURAM.**
2. **LEKSHMANA PANICKER RAVEENDRAN, DO. DO.**
3. **LEKSHMANA PANICKER SUDHAKARAN, DO. DO.**
4. **LEKSHMANA PANICKER THULASEEDHARAN, DO. DO.**
5. **SARASAMMA BABY, DO. DO.**
6. **SARASAMMA SREEKUMARI, DO. DO.**

BY ADV. SRI.K.B.PRADEEP.

RESPONDENTS/PETITIONERS/DEFENDANTS 33, 64 & 65, 82, 87, 109 & 110, 112 TO 115, 120 AND 124 TO 127:

1. **RAMAN CHELLAPPAN, PARAPADARNA PURAYIDAM, CHOWARA P.O., KOTTUKAL, THIRUVANANTHAPURAM.**
2. **KUNJAN SUNDARESAN, PUNNAVILA VEEDU, PANANGODE DESOM, THIRUVANANTHAPURAM.**
3. **RAMAN KRISHNAN, THRIVILAYYA CHERARUVILA VEEDU, KOTTUKAL, THIRUVANANTHAPURAM.**

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4. LEKSHMI RAJAMMA, PASRAPADARNA VEEDU, KOTTUKAL, THIRUVANANTHAPURAM.

5. LEKSHMI SARADA, DO. DO.

6. JYOTHISHKUMARI, D/O. RAMAN SIVATHANU, DO. DO.

7. GEETHAKUMARI, D/O. RAMAN SIVATHANU, DO. DO.

8. S. SURESHKUMAR, S/O. SAHADEVA PANICKER, RESIDING AT SYAMALA MANDIRAM, CHOWARA P.O., NEYYATTINKARA, THIRUVANANTHAPURAM.

9. S. SHEELA, D/O. SAHADEVA PANICKER, DO. DO.

10. LEELA, W/O. MADHAVAN CHELLAPPAN, PARAPADARNA VEEDU, VADAKKUVARAM, CHOWARA P.O., KOTTUKAL, THIRUVANANTHAPURAM.

11. SAILAJA, D/O. MADHAVAN CHELLAPPAN, DO. DO.

12. THANKAMMA LEELA, PARAPADARNA PUTHEN VEEDU, CHOWARA P.O., KOTTUKAL, THIRUVANANTHAPURAM.

13. JALAJA, W/O. NEHRU, CHOWARA THANNININNA KUZHIVILA VEEDU, CHOWARA, KOTTUKAL VILLAGE, THIRUVANANTHAPURAM.

14. JALAJA SHAMMI, D/O. NEHRU RESIDING AT DO. DO.

15. SHAJI, S/O. NEHRU, DO. DO.

16. SHIBIJA, D/O. NEHRU, DO. DO.

BY ADV. SRI.L.MOHANAN,
ADV. SRI.L.MOHANAN,
ADV. SMT.LIGEY ANTONY.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/10/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P. NO. 7063/2002 IN C.R.P. NO. 2807/2002

DISMISSED

25/10/2007. **SD/- M.N.KRISHNAN, JUDGE.**

//TRUE COPY//

prv.

M.N. KRISHNAN, J.

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C.R.P. NO. 2807 OF 2002

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Dated this the 25th day of October, 2007.

O R D E R

This revision petition is preferred against the order of the II Addl. Munsiff, Neyyattinkara in I.A.5608/02 in O.S.407/69. The order reveals that the suit is having a chequered career and even a final preliminary decree for redemption and partition is not yet passed. The matter came up to this Court and this Court remanded the matter to the appellate court and the appellate court has called for a finding on certain aspects. It is only at that stage an application for issuance of a Commission is filed by the 33rd defendant on behalf of defendants 37, 64, 65, 67, 82, 87, 109, 110, 112 to 115, 120 and 124 to 127. The purport of the application is to gather materials in order to establish before the Court regarding the plea of ouster. The matter was remanded also for the purpose of consideration of that material. When a plea of ouster is pleaded it may be relevant to look into the factum

of different segments of properties and their boundaries so that one may get an idea for how how long it had been enjoyed separately. The question of animus etc. are all materials which has to be considered only at the stage of trial. The request of the petitioners to measure and demarcate each segment of property with reference to the title deeds and the prayer to assess the age of the building etc. are almost impracticable for the reason it is alleged that more than 50 buildings are in existence in that property now and further it is not a matter which a Commissioner has to do but it is the duty of the parties claiming to establish that fact. But certain materials like the physical condition of the property, whether the properties are laying with separate boundaries and whether there are trees standing on the boundaries of the property, their age etc. may be an indicator to show the length of possession which may have some bearing in deciding the case. Similarly, the Commissioner

can also note out the existence of the roads, lanes, channels etc. which is running through the property or which is in and around the property. Therefore, I modify the order of the learned Munsiff and direct the Munsiff to appoint a Commissioner for noting down the following particulars namely,

(1) The Commissioner may be directed to find out how many buildings are situated in the plaint schedule property and whether each building is enclosed by a separate compound and whether there are demarcating boundaries for each of these compounds and if there are trees standing in the boundaries of the property, the age of the trees etc. These factors may be noted by the Commissioner.

(2) Similarly, the Commissioner may also be directed to note the presence of the roads, by-lanes and channel which is situated on the side of the property.

(3) The prayer for identifying the property with respect to Exts.B1 to B45, measure them independently and demarcate them are disallowed. It is a matter that can be proved by documentary evidence by the defendants.

With these observations, this CRP is disposed of.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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C.R.P. No. 2807 OF 2002

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O R D E R

25th October, 2007.